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No. 95-1858

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

DENNIS C. VACCO, Attorney General of the State of New York; GEORGE E. PATAKI, Governor of the State of New York; and ROBERT M. MORGENTHAU, District Attorney of New York County,

Petitioners,

v.

TIMOTHY QUILL, M.D.; SAMUEL C. KLAGSBRUN, M.D.; and HOWARD A. GROSSMAN, M.D.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE UNITED STATES CATHOLIC CONFERENCE; NEW YORK CATHOLIC CONFERENCE; WASHINGTON STATE CATHOLIC CONFERENCE; OREGON CATHOLIC CONFERENCE; CALIFORNIA CATHOLIC CONFERENCE; MICHIGAN CATHOLIC CONFERENCE; CHRISTIAN LIFE COMMISSION OF THE SOUTHERN BAPTIST CONVENTION; NATIONAL ASSOCIATION OF EVANGELICALS; THE LUTHERAN CHURCH-MISSOURI SYNOD; AND CHRISTIAN LEGAL SOCIETY IN SUPPORT OF PETITIONERS

Of Counsel:
JEFFREY HUNTER MOON
Solicitor
MICHAEL F. MOSES
Assistant General Counsel

June 14, 1996

MARK E. CHOPKO *
General Counsel
UNITED STATES CATHOLIC CONFERENCE
3211 Fourth Street, N.E.
Washington, D.C. 20017
(202) 541-3300
* *Counsel of Record*

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

Pursuant to Rule 37.2 of the Rules of this Court, the United States Catholic Conference, New York Catholic Conference, Washington State Catholic Conference, Oregon Catholic Conference, California Catholic Conference, Michigan Catholic Conference, Christian Life Commission of the Southern Baptist Convention, National Association of Evangelicals, The Lutheran Church-Missouri Synod, and Christian Legal Society respectfully move for leave to file the accompanying brief *amici curiae* on behalf of the petitioners, Dennis C. Vacco, *et al.*, whose written consent has been provided to the Clerk of the Court. The respondents, Timothy Quill, *et al.*, refused to consent to the filing of this brief.

In support of its motion, these amici state:

1. The United States Catholic Conference is a nonprofit corporation organized under the laws of the District of Columbia. Its members are the active Catholic Bishops in the United States. The Bishops of New York, Washington, Oregon, California, and Michigan are also members of the State Catholic Conferences of those respective states. The Conferences are vehicles through which the Bishops speak cooperatively and collegially on matters affecting the Catholic Church and its people. The Conferences advocate and promote the pastoral teaching of the Church on diverse issues, including the protection of human rights and the sanctity and dignity of human life. Each of the Conferences has been active in supporting state laws that protect persons from deadly self-inflicted harm. Roman Catholicism is the largest religious denomination in the United States, with over 60 million members in this country.

2. The Christian Life Commission is the moral concerns and public policy agency for the Southern Baptist Convention, the nation's largest Protestant denomination, with over 15.2 million members in over 38,000 autonomous local churches. The Commission is charged with addressing public policies affecting the sanctity of human life.

3. The National Association of Evangelicals ("NAE") is a nonprofit association of evangelical Christian denominations, churches, organizations, institutions and individuals. It includes some 42,500 churches from 75 denominations, and 300 parachurch ministries. NAE has joined in this and many other *amicus* briefs in the defense of human rights, including the right to life.

4. The Lutheran Church-Missouri Synod is the second-largest Lutheran denomination in the United States. It has about 6,000 member congregations and about 2.6 million individual members. In 1995, as a result of their deeply held religious beliefs on the sanctity of life, the congregations of the Synod passed a resolution expressing the Synod's objection "to medical personnel having any part in actively inducing death, even at the patient's request." The Synod resoived "to speak against any attempt to legalize physician-assisted suicide. . . ."

5. Founded in 1961, the Christian Legal Society ("CLS") is a nonprofit association of 4,700 Christian attorneys, law professors, and law students with chapters in every state and at 85 law schools. CLS's legal advocacy and information arm, the Center for Law and Religious Freedom, advocates for the protection of religious exercise and the sanctity of human life in federal and state courts nationwide.

6. This is a case of extraordinary national importance. The United States Court of Appeals for the Second Circuit below concluded that the Equal Protection Clause prevents New York from uniformly enforcing its criminal laws that prohibit intentionally aiding another to commit or attempt suicide. The finding that some class of citizens—in this case, the "terminally ill" in the "final stages" of their illness—are not protected under the homicide laws flies in the face of the very constitutional provision upon which the Second Circuit purported to ground its decision. This case involves not only a question of historic importance, but literally means life or death for some of the Nation's most vulnerable citizens. No issue could be more serious. No dispute could be more deserving of a full airing of all views.

7. The amici speak from religious traditions and recognize the dignity and sanctity of each human person. Because of this perspective, these traditions speak uniquely to a number of ethical, moral, and legal distinctions that are central to the outcome of this case, distinctions that were obscured by the court below. These traditions also speak powerfully about the Nation's proper role in caring compassionately for those afflicted with terminal illness.

WHEREFORE, the amici respectfully request that this Court grant their motion and permit them to file the accompanying brief *amici curiae* in support of the petitioners.

Respectfully submitted,

MARK E. CHOPKO *
General Counsel
UNITED STATES CATHOLIC CONFERENCE
3211 Fourth Street, N.E.
Washington, D.C. 20017
(202) 541-3300
* *Counsel of Record*

Of Counsel:
JEFFREY HUNTER MOON
Solicitor
MICHAEL F. MOSES
Assistant General Counsel

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INTEREST OF AMICI

The amici, representatives of various religious communities in the United States, unite here for the common

purpose of calling this Court's attention to a decision of singular moment in the development of constitutional law. The United States Court of Appeals for the Second Circuit ruled below that the Equal Protection Clause forbids a state to protect all persons, equally, from being assisted by others to inflict deadly harm upon themselves. No longer, the Second Circuit ruled, can our society uniformly prohibit one person from enabling another person to take his or her life. In reaching this shocking conclusion, the Second Circuit obliterated a distinction recognized for centuries in life, law, and morality: the distinction between letting nature take its course for a dying patient (which is everywhere permitted), and intervening in that course by intentionally providing a person with a lethal agent to cause death (which is a form of homicide in New York and most other states). Our laws have always condemned acts of deadly harm directed against others. The Second Circuit's extraordinary uprooting of this long-recognized proscription demands the attention of this Court, which is called upon to preserve a basic precept of American life and government—*that no one may take the life of another even if asked.*

Individual statements of interest follow.

The United States Catholic Conference is a nonprofit corporation organized under the laws of the District of Columbia. Its members are the active Catholic Bishops in the United States. The Bishops of New York, Washington, Oregon, California, and Michigan are also members of the State Catholic Conferences of those respective states. The Conferences are vehicles through which the Bishops speak cooperatively and collegially on matters affecting the Catholic Church and its people. The Conferences advocate and promote the pastoral teaching of the Church on diverse issues, including the protection of human rights and the sanctity and dignity of human life. Each of the Conferences has been active in supporting state laws that protect persons from deadly self-inflicted harm. Roman Catholicism is the largest religious denomination in the United States, with over 60 million members in this country.

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SUMMARY OF ARGUMENT

The petition for writ of certiorari seeks review of a decision that is as chilling as it is without foundation in law. The Second Circuit held below that New York homicide laws that prohibit intentionally aiding another to commit or attempt suicide may *not* be applied to everyone, equally, under the Equal Protection Clause. This extraordinary and unprecedented ruling—that "terminally ill persons" in the "final stages" of their illness, as a class, constitutionally must be *excluded* from the mandatory protection of these laws—ignores the very principle of equal protection upon which the court purported to ground its decision. The criminal law applies to *everyone*.

This case is not about withdrawing or refusing medical treatment so that nature may take its course. It is about providing the terminally ill with a death-producing agent for the express purpose of causing death. The Court of Appeals erroneously concluded that the Constitution forbids States to recognize a difference between the two. Thus, the Second Circuit cast aside as "irrational" a distinction that has achieved nearly universal recognition in the common law, statutory law, the medical profession, and countless court decisions. Indeed, in 1994, a Task Force appointed by the Governor of New York cited the distinction between declining medical treatment and administering a lethal agent with the intentional purpose of causing death, as one of many reasons for retaining the State's laws prohibiting assisted suicide.

The Second Circuit's decision, if uncorrected, will have deadly consequences for people who are already marginalized in our society. The poor, the elderly, members of minorities, and those without access to medical care—these are the ones who will be killed, the Task Force found, if the prohibition against assisted suicide is lifted. It is a grave injustice to rob any person of the protections against deadly harm that are extended to all others under the criminal law. Indeed, withholding such protections

is an injustice of unspeakable magnitude, for it leads to the literal destruction of the very lives that government is charged with protecting.

This case must be heard. The decision below must be reversed.

ARGUMENT

We seek the intervention of this Court to answer what without exaggeration, may be the most profound and far-reaching federal constitutional question ever to have demanded its attention. Although we Americans differ in many ways, each of us ultimately will face death, our own and that of loved ones. This case raises the question whether a centuries-old tradition—a tradition that dictates that *we will not take the life of another even if asked*—should be abandoned at the behest of a small, determined group of advocates who persist in claiming that our Constitution includes a right to obtain from another the means of committing an act of deadly, self-inflicted violence. So far these advocates have persuaded two courts—the court below [1] and the United States Court of Appeals for the Ninth Circuit [2]—to rule in their favor on distinctly different grounds.[3] Both decisions require action by this Court to correct the errors below.

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[1] *Quill v. Vacco*, 80 F.3d 716 (2d Cir. 1996).

[2] *Compassion in Dying v. Washington*, 79 F.3d 790 (9th Cir. 1996) (mandate stayed). We are informed that a petition for writ of certiorari is to be filed shortly.

[3] There is, in fact, a three-way conflict between *Quill* and other cases that have addressed the issue of assisted suicide. The Ninth Circuit in *Compassion in Dying* held that the "terminally ill" have a due process right to assisted suicide. 79 F.3d at 793-94, 838. The Second Circuit in *Quill* rejected an asserted due process right to assisted suicide, 80 F.3d at 723-25, but held that those in the "final stages" of a "terminal illness" have an equal protection right to assisted suicide. *Id.* at 731. Michigan's highest court held in *People v. Kevorkian*, 527 N.W.2d 714 (Mich. 1994), *cert. denied*, 115 S. Ct. 1795 (1995), that there is neither a due process nor

Neither the text nor the history of the Constitution, nor any of this Court's decisions, embraces a "right to hasten death" requiring states to provide selective, status-dependent "exceptions" to general prohibitions against taking the life of another. That any court believes otherwise is sufficient reason to grant the pending petition for writ of certiorari. For sound legal, factual, and moral reasons, including the extraordinary and unprecedented breadth of the decision below, this Court must grant the petition and give this matter full consideration.

I. THE EQUAL PROTECTION CLAUSE DOES NOT REQUIRE UNEQUAL APPLICATION OF THE HOMICIDE LAWS

The New York homicide laws struck down in this case protect all persons, equally, from being aided and encouraged to inflict deadly harm upon themselves. N.Y. Penal Law § 125.15 (intentionally aiding another to commit suicide is a felony); N.Y. Penal Law § 120.30 (intentionally aiding another to attempt suicide is a felony). The Second Circuit concluded that the Equal Protection Clause prevents New York from applying sections 125.15 and 120.30 equally to all citizens. This startling conclusion—that the Equal Protection Clause actually requires radically unequal application of a criminal law depending on the health status of the intended victim—ignores the very principle of equal protection upon which the court purported to ground its decision. Clearly New York may uniformly enforce laws that prohibit one person from providing others with the means of taking their own lives. The opinion below challenges the fundamental principle that criminal laws, including those struck down in this case, are meant to protect everyone.

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equal protection right to assisted suicide. A federal district judge has held that an Oregon law excluding the terminally ill from criminal and civil protections against assisted suicide violates the Equal Protection Clause. *Lee v. Oregon*, 891 F. Supp. 1429 (D. Or. 1995), *on appeal*, Nos. 95-35804, -35805, -35854, -35948, -35949 (9th Cir.).

This Court should consider at the outset the dark import of the ruling below. The New York statutes at issue prevent what the law has always and everywhere allowed a state to prevent: conduct facilitating the direct taking of another person's life. This is not a case about withdrawing or refusing futile or unwanted medical treatment. This is a case about deliberately and intentionally giving people a lethal agent to make them die.

The court below reached its result because it presumed incorrectly the existence of a "right to hasten death." Having framed the issue in this fashion, it was an overly simplistic, albeit dramatic, leap for the court below to say, for equal protection purposes, that there is no distinction between causing someone to die from suicide and allowing someone to die by withdrawing life-saving medical treatment since both result in "hastening death." *Quill*, 80 F.3d at 729. Framing the issue in this fashion, however, obliterates a crucial distinction that the law and medical practice have always recognized. As this Court has made plain in its due process jurisprudence, the framing of the issue and the description of the asserted right are of extreme importance in deciding a case.[4] By presuming that there exists a "right to hasten death," without analysis and without taking into account any of the analytical steps prescribed by this Court for identifying non-textual rights,[5] the court below created the very legal error which requires the intervention of this Court now.[6]

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[4] *Planned Parenthood v. Casey*, 505 U.S. 833, 847-48 (1992); *Michael H. v. Gerald D.*, 491 U.S. 110, 118-30 (1989).

[5] Constitutional protection is accorded to those non-textual interests "deeply rooted in this Nation's history and tradition," *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977), or which are "implicit" in the very "concept of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319, 325-28 (1937).

[6] There is no "right to hasten death." Intentionally hastening death is a homicide even if the victim would have died soon from some other cause.

Constitutional rights, moreover, are defined by their application and factual context. Decisions of this Court prove time and again

Far from promoting equal protection of the law, the decision of the Second Circuit represents a direct attack on the fundamental equality and dignity of each and every human life, including "terminally ill" persons in the "final stages" of their illness,[7] whom the Second Circuit singled out for disparate treatment.

Ours has always been a society that "strongly affirms the sanctity of life." *Furman v. Georgia*, 408 U.S. 238, 286 (1972) (Brennan, J., concurring). The Fourteenth Amendment guarantees this fundamental value by requiring equal protection of the criminal law and by denying states the power to "deprive any person of life . . . without due process of law." To hold that the Constitution gives one class of persons a special "right" to enlist others in obtaining a lethal agent to end their own lives represents a judgment that some lives are no longer worth protecting. Any branch of government that would adjudge some lives no longer worth protecting threatens human life and liberty.

II. THERE IS A PROFOUND DISTINCTION BETWEEN WITHDRAWING MEDICAL TREATMENT AND ASSISTING IN A SUICIDE

The Second Circuit's inherently contradictory conclusion that the Equal Protection Clause forbids New York to protect all New York citizens against deadly self-

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that interests for which constitutional protection is sought "cannot be described merely at the level of philosophic abstraction. . . ." Mark E. Chopko & Michael F. Moses, *Assisted Suicide: Still A Wonderful Life?*, 70 Notre Dame L. Rev. 519, 559 (1995). There is a "right to marry," for example, but no right to marry one's blood relatives. There is a "right to direct the upbringing of one's children," but no right to expose them to deadly harm.

[7] In its opinion, the Second Circuit provided no definition of either "terminally ill" or "final stages," claiming that these are well understood. Yet, as the Ninth Circuit noted in *Compassion in Dying v. Washington*, there are 41 state laws providing widely different definitions of "terminal" illness. 79 F.3d at 818 & n.77.

inflicted harm might have been avoided had that court not obliterated a distinction that has been recognized for centuries in life, law, and morality. It is the distinction between letting nature take its course, on the one hand, and intervening in that course, on the other hand, by intentionally administering a lethal agent to cause the death of another person.[8] Indeed, the claim that there is no constitutionally permissible distinction between refusing medical treatment and deliberate killing ignores the very distinction upon which the right to refuse medical treatment was grounded in the first instance. *Matter of Quinlan*, 355 A.2d 647, 665 (N.J. 1976) ("We would see . . . a real distinction between the self-infliction of deadly harm and a self-determination against artificial life support . . . in the face of irreversible, painful and certain imminent death"), *cert. denied sub nom. Garger v. New Jersey*, 429 U.S. 922 (1976).[9] Cases adhering to this crucial distinction are legion.[10] The distinction is also

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[8] The Second Circuit, while seeing no constitutionally relevant distinction between refusing medical treatment and assisted suicide, purported to limit the right to assisted suicide to the terminally ill. The right to refuse medical treatment, however, is not limited to the terminally ill. *Cruzan v. Director, Missouri Dep't of Health*, 497 U.S. 261, 269 (1990).

[9] Even the common law origin of the right to refuse unwanted medical treatment illustrates how radically different it is from an affirmative act of homicide or suicide. The right to refuse medical treatment is rooted in the common law right to be free of unwanted bodily contact. *Cruzan*, 497 U.S. at 269. From a physician's standpoint, the patient's "right" to decline treatment is a *limitation* on the doctor's power. Indeed, a doctor commits a battery if he or she treats a patient without the patient's consent. The common law, by contrast, has never granted a physician the power deliberately to cause death.

[10] *See, e.g., Matter of Storar*, 420 N.E.2d 64, 71 n.6 (N.Y. App.) (distinguishing a natural death from self-inflicted killing), *cert. denied*, 454 U.S. 858 (1981); *Barber v. Superior Court*, 195 Cal. Rptr. 484, 487 (Cal. App. 1983) ("Euthanasia, of course, is neither justifiable nor excusable in California"); *Superintendent of Belchertown v. Saikewicz*, 370 N.E.2d 417, 426 n.11 (Mass. 1977) (distin-

recognized in state living will statutes.[11]

Decisions to refuse treatment are "legally and ethically distinct" from decisions to administer "a lethal agent with the intentional purpose of terminating life." American Bar Association, Commission on Legal Problems of the Elderly, Memorandum of Jan. 17, 1992, *reprinted in* 8 Issues L. & Med. 117, 118 (Summer 1992). Assisted suicide "involves not letting the patient die, but making the patient die. . . ." Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* 236 (1993). The American Medical Association recognizes a "fundamental difference between refusing life-sustaining treatment and demanding a life-ending treatment." AMA Council on Ethical and Judi-

guishing a "competent, rational decision to refuse treatment when death is inevitable" from an act of intentional self-destruction; *Bartling v. Superior Court*, 209 Cal. Rptr. 220, 225-26 (Cal. App. 1984) (suicide is distinguishable from death from natural causes which results from disconnecting a respirator from a comatose, terminally ill patient); *Matter of Conroy*, 486 A.2d 1209, 1224 (N.J. 1985) (declining life-sustaining medical treatment is distinguishable from suicide because it "merely allows the disease to take its natural course; if death were eventually to occur, it would be the result, primarily, of the underlying disease, and not the result of a self-inflicted injury"); *Bouvia v. Superior Court*, 225 Cal. Rptr. 297, 306 (Cal. App. 1986) (a "decision to allow nature to take its course is not equivalent to an election to commit suicide with . . . parties aiding and abetting therein"); *Brophy v. New England Sinai Hospital*, 497 N.E.2d 626, 635 n.29, 638 (Mass. 1986) ("the law does not permit suicide," which is distinguishable from the decision to remove life-sustaining treatment from a patient who is in a persistent vegetative state and unlikely to regain cognitive functioning); *Donaldson v. Van de Kamp*, 4 Cal.Rptr.2d 59, 63 (Cal. App. 1992) ("Here there are no life-prolonging measures to be discontinued. Instead, a third person will simply kill [the plaintiff]"). *See also* Edward R. Grant & Paul Benjamin Linton, *Relief or Reproach?: Euthanasia Rights in the Wake of Measure 16*, 74 Oregon L. Rev. 449, 465-66 n.59 (1995) (citing additional cases).

[11] Alan D. Lieberson, *Advance Medical Directives* 93, 317-18 (1992).

cial Affairs, *Report 1-93-8*, at 2.[12] To restate the AMA position:

> When a life-sustaining treatment is declined, the patient dies primarily because of an underlying disease. The illness is simply allowed to take its natural course. With assisted suicide, however, death is hastened by the taking of a lethal drug or other agent. Although a physician cannot force a patient to accept a treatment against the patient's will, even if the treatment is life-sustaining, it does not follow that a physician ought to provide a lethal agent to the patient. The inability of physicians to prevent death does not imply that physicians are free to help cause death.

Id. Elimination of this distinction by the court below overrides the medical profession's own "unqualified opposition to physician-assisted suicide." Brian McCormick, *Continued Opposition: House Refuses to Open Door on Physician-Assisted Suicide*, Am. Med. News, Dec. 20, 1993, at 7. In simple terms, in the case of termination of medical treatment, it is the underlying pathology that prevails—the inability to breathe or eat or swallow. In a "suicide," it is the administration of a lethal agent that deliberately disrupts that course. Because so much of the common law is based on issues of intent, ignoring such distinctions, as the court did below, fundamentally alters this most basic protection and puts at risk every life at one of its most vulnerable stages.

Like the AMA, ABA, and countless courts, New York knows (and argued below) that there is a material difference between terminating medical treatment and assisting

[12] Individual health care professionals understand the difference as well, with 87% of physicians and nurses in a recent study agreeing that "to allow patients to die by forgoing or stopping treatment is ethically different from assisting in their suicide." Mildred Z. Solomon, *et al.*, *Decisions Near the End of Life: Professional Views on Life-Sustaining Treatments*, 83 Am. J. of Pub. Health 14, 17-18 (Jan. 1993).

in a suicide. In 1994, the 25-member Task Force on Life and the Law appointed by the Governor of New York concluded that the distinction was one of many reasons for retaining the existing New York ban on assisted suicide. The Task Force wrote:

> As . . . courts have recognized, the fact that the refusal of treatment and suicide may both lead to death does not mean that they implicate identical constitutional concerns. The imposition of life-sustaining medical treatment against a patient's will requires a direct invasion of bodily integrity and, in some cases, the use of physical restraints, both of which are flatly inconsistent with society's basic conception of personal dignity. . . . It is this right against intrusion—not a general right to control the timing and manner of death—that forms the basis of the constitutional right to refuse life-sustaining treatment. Restrictions on suicide, by contrast, entail no such intrusions, but simply prevent individuals from intervening in the natural process of dying.

New York State Task Force on Life and the Law, *When Death Is Sought: Assisted Suicide and Euthanasia in the Medical Context* 71 (1994).

Contrary to the Second Circuit's opinion, *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990), does not dictate a different result. In *Cruzan*, this Court held that a state may require clear and convincing evidence of a comatose patient's wishes before allowing discontinuation of artificially provided nutrition and hydration at the direction of a surrogate. This Court, in *Cruzan*, never endorsed the administration of a lethal agent under the guise of a right intentionally to "hasten death." Rather, *Cruzan* (a) involved the discontinuance of an allegedly intrusive and burdensome medical treatment, (b) upheld the State's interest in preserving the patient's life (regardless of its alleged "quality") as against the wishes of those who sought to discontinue

treatment,[13] and (c) protected the exercise of the right against a possible erroneous determination by allowing a State to require particularly strong proof of the patient's wishes.

III. THIS CASE RAISES FUNDAMENTAL QUESTIONS ABOUT THE ROLE AND RULE OF LAW IN THIS SOCIETY

The purported right to have one person provide another with a lethal agent to take his or her own life is often described as a matter of personal autonomy—unlimited, exclusive self-determination. Such limitless autonomy threatens the way we order ourselves as a democratic society.

In this society, law has always been a guide and regulator. It is about *ordered* liberty. *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). The law has always acted to restrain personal choices that harm persons or the common good. Because we are a society that "strongly affirms the sanctity of life,"[14] we Americans have not endorsed demands to assist those who would make seemingly personal choices that diminish their own lives or the common good. For example, this Court has never held that the Constitution gives a person an absolute right to do with one's body as he or she pleases. *Roe v. Wade*, 410 U.S. 113, 154 (1973) (refusing to recognize such a right). Thus, a person has a right to refuse medical treatment, but no right to refuse vaccination from contagious diseases. *Jacobson v. Massachusetts*, 197 U.S. 11, 26-27 (1905) (rejecting autonomy right in favor of common good). "The state statute books are replete with constitutionally unchallenged laws against prostitution, suicide, voluntary self-mutilation, brutalizing 'bare fist' prize

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[13] States legitimately may assert "an unqualified interest in the preservation of human life. . . ." *Cruzan*, 497 U.S. at 282.

[14] *Furman v. Georgia*, 408 U.S. 238, 286 (1972) (Brennan, J., concurring).

fights, and duels, although these crimes may only directly involve 'consenting adults.'" *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 68 n.15 (1973). The choice of a spouse is perhaps the deepest and most intimate of personal choices. Yet that choice too is limited by concerns for the common good, expressed in limitations based on affinity, consanguinity, and gender. In each of these instances, the claims of an individual are balanced against, and sometimes subordinated to, the common good.

For many reasons, the common good argues strongly against physician-assisted suicide. We need to ask—and this Court needs to confront—the larger consequences for education, economic reform, the eradication of poverty, discrimination, and other ills of society if we foster the attitude that, in the face of seemingly intractable difficulties, it is not only an individual's right to surrender but to enlist others to provide the means to end his or her life. It has been predicted that the poor, the elderly, minorities, and women [16] are more likely to be encouraged to "request aid" in dying (or have it requested "for" them by surrogates) than any other class. If pain and suffering are consequences of the failure of available medical care to respond fully to clinical depression or pain, then those most likely to suffer (and thus be tempted to choose suicide) are those for whom quality health care is the exception rather than the rule, or for whom adequate health care is altogether an illusion. The poor, the elderly, the isolated, minorities, the disabled, and women will disproportionally feel the impact of a social system that will now be built around a "right to hasten death." It was for this reason, among others, that the diverse members of the New York State Task Force on Life and the Law unanimously rejected the view that the

[16] Sidney Callahan, *A Feminist Case Against Self-Determined Dying in Assisted Suicide and Euthanasia*, 1 Studies in Pro Life Feminism 303-317 (Fall 1995).

State's prohibition against assisted suicide should be altered in any way:

> No matter how carefully any guidelines are framed, assisted suicide and euthanasia will be practiced through the prism of social inequality and bias that characterizes the delivery of services in all segments of our society, including health care. The practices will pose the greatest risks to those who are poor, elderly, members of a minority group, or without access to good medical care.

New York State Task Force on Life and the Law, *supra* at xiii.

This case asks plainly how constitutional law and constitutional principle can and should develop over the foreseeable future. It asks whether the rule of law, which traditionally has prevented people from enlisting others to carry out self-destructive impulses, may crumble in the face of some newly-minted claim of unbridled autonomy. It asks whether traditional and valued distinctions in the law and in medical practice must give way to these new claims of autonomy—claims which are self-contradictory, for they destroy the very person whose freedom they claim to maximize. At bottom, this case asks whether the kind of society we are to become will reflect our deepest values or none at all. Some argue that the time for euthanasia has arrived simply because our society lacks the will to stop it. On the contrary, these amici vigorously stand against it because it runs counter to our nature and the common good. Our society is made richer through the lives and well-being of all.

CONCLUSION

For the foregoing reasons of law and policy, this Court should grant the petition for certiorari filed by the Attorney General of the State of New York, Governor of New York, and District Attorney of New York County, and set this case for argument. The judgment of the Second Circuit should be reversed.

Respectfully submitted,

Of Counsel:
JEFFREY HUNTER MOON
Solicitor
MICHAEL F. MOSES
Assistant General Counsel

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MARK E. CHOPKO *
General Counsel
UNITED STATES CATHOLIC CONFERENCE
3211 Fourth Street, N.E.
Washington, D.C. 20017
(202) 541-3300
* *Counsel of Record*